IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 855 OF 2004

Saraswati Baburao Sonar
(since deceased through her
L.R.) Bhagwan Ramchandra Sonar. ... Appellant

V/s

Godabai Ganpati Sonar Dixit & ors. ... Respondents

Mr. R.S. Kate for the appellant.

Mr. R.A. Thorat for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 19TH SEPT., 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Satara allowing the appeal and setting aside the judgment and order passed by the Civil Judge, Wai, dated 19.4.1982 decreeing the plaintiffs' suit.

2. I have heard the learned counsel for both parties. Perused the record.

3. The Plaintiff filed the suit for possession of the suit property and for consequential reliefs from the defendants. It was the case of the plaintiff that the Collector had issued Certificate under Sec.88-B of the B.T. & A.L. Act and, as such, the notice of termination of the tenancy of the defendants in the suit property was issued and plaintiff had right to recover the possession of tenanted suit property from the defendants. Hence the suit was filed.

Defendants contested the suit stoutly challenging the allegations and inter-alia denying the plaintiff's suit and submitted that the plaintiff had no locus-standi to file the suit and, as such, the suit sought to be dismissed.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved his case and decreed the suit.

The appeal was carried to the District Court at Satara. The learned Addl. District Judge, after hearing both parties, came to the conclusion that the plaintiff had no locus-standi to terminate the tenancy by invoking Sec.111 (h) of Transfer of Property Act and though the

plaintiff had proved that one Ganpati Kashinath Sonar-Dixit was inducted by original permanent tenant in the suit property as a sub-tenant, however, the plaintiff was held to be failed to prove that after the death of original permanent tenant he inherited the tenancy rights and finally allowed the appeal dismissing the suit. Hence the present appeal.

5. At the outset, it may be noted that the only question sought to be raised on behalf of the appellant which requires consideration is, whether the finding recorded by the lower appellate Court to the effect that the plaintiff had no locus-standi to terminate the tenancy of the defendants by invoking provisions of Sec.111 (h) of the B.T. & A.L. Act or not.

In this regard, it must be noted that, admittedly, the suit property belongs to the Trust and it is not in dispute that the suit land received by the original Devsthan as a gift and it is Inam land of Devasthan. It is not also in dispute that the original plaintiff's husband Baburao Sonar was a permanent owner of the suit land and suit land was sub-let to Ganpati Kashinath Sonar in 1941 and since then Ganpati Kashinath sonar was continuously in possession of the suit land and he died

on 29.5.1958 and after his death, defendants came in possession and since then they have been cultivating the suit lands and paying rent to the plaintiff. In this regard, it must also be noted that the Dy. Collector of Mahabaleshwar under Sec. 88-B of the B.T. & A.L. Act issued certificate under the said provision. It appears from the certificate that the same had been issued by the Collector Mahabaleshwar in the year 1959. Admittedly, defendants are claiming right from the original sub-tenant. Admittedly, in this case, neither the sub-tenant nor the present defendants have challenged the issuance of certificate by the then District Collector in favour of the Devasthan. On these factual matrix, the learned Trial Judge has come to the conclusion that, since it is not in dispute that the Trust, to whom the suit property belongs, has obtained certificate in respect of the suit land under Sec. 88-B of the B.T. & A.L. Act and, therefore, the exemption is granted and even the sub-tenant cannot claim any right under Sec. 32-G of the B.T. & A.L. Act. In other words, the protection given by the Act is taken away once the certificate is obtained by Trust under Sec. 88-B of the said Act. However, by operation of law he became the tenant of the Trust on the tillers' day and, therefore, the plaintiff has absolutely no

right to terminate the tenancy of the defendants by invoking the provision of Sec. 111 (h) of the Transfer of Property Act. I find no fault in that reasoning adopted by the lower appellate Court while holding that the plaintiff had no locus-standi to issue the notice of termination under the said provision of the Transfer of Property Act and, as such, the suit based upon that is bound to fail.

In the result, there is no substantial question of law involved in this appeal and, as such, the appeal stands dismissed with no order as to costs.

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